CRIMINAL APPEAL NO. 603 OF 1987

Date of Decision:10.7.95.

THE HONOURABLE MR. JUSTICE B.C.PATEL AND

THE HONOURABLE MR. JUSTICE K.R.VYAS

- 1. Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2. To be referred to the Reporter or not ?
- 3. Whether their Lordships wish to see the fair copy of judgment ?
- 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
- 5. Whether it is to be circulated to the Civil Judge ?

Karsanbhai Hirabhai Tadavi......Appellant

Versus

State of Gujarat......Respondent

Mr.H.M.Chinoy, Advocvate (Amicus Curiae) for the appellant.

Mr. J.A.Shelat, Addl.PP for

CORAM:B.C.PATEL & K.R.VYAS,JJ 10TH JULY,1995

ORAL JUDGMENT: (PER: K.R.VYAS, J)

The present appeal arises out of the judgment and order dated 23rd July, 1987 passed by the learned Additional Sessions Judge, Bharuch , Camp at Rajpipla in Sessions Case No.78/86 convicting the appellant for the offence of causing murder of Ganpat Jetha by inflicting an axe blow on his head, punishable under section 302 of the Indian Penal Code and sentencing him to suffer R.I. for life.

It is the case of the prosecution that the marriage of the brother's sister of the deceased Ganpat was arranged on 6-5-86 and as the appellant was a headstrong person; had given knife blow to one Ramesh Dahya on the last Holi festival, he was expelled from the community and, therefore, was not invited by the deceased for the dinner in the marriage. It appears that there were some exchange of words between the deceased and the appellant on this count prior to the incident. On 5-5-86 at about 2.30 a.m. when the deceased was

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(PW 4) the wife of the

deceased was sitting near the cot of the deceased as Mahendra, her grand son, was passing tools, she saw the appellant coming with an axe. She shouted for help. However, the appellant inflicted an axe blow on the head of her husband. The appellant after causing injury immediately ran away leaving the axe there as he could not remove it from the head of the deceased . On hearing the shouts, her son Vikram (PW 5) with his wife Savita came out from their room. Ramila told them that the appellant had caused injury to the deceased. Vithalbhai (PW 3), the uncle-in-law of Ramila was called, who later on filed the complaint (Ex.8) with the Vavdi Outpost. Mr. R.A.Patel, PSI, Rajpipla Police Station, on the basis of the complaint, registered the offence under section 302 of the IPC and started investigation. After recording the statements, preparing the relevant Panchnamas, sending the dead body for post-mortem , collecting the muddamal axe from the scene of offencepo t-mortem , collecting the muddamal axe from the scene of offencepost-mortem , ollecting the muddamal axe from the scene of offencepost-mortem , collecting t e muddamal axe from the scene of offencepost-mortem , collecting the muddamal xe from the scene of offencepost-mortem , collecting the muddamal axe from the scene of offencepost-mortem , collecting the muddamal axe from the scene of of encepost-mortem , collecting the muddamal axe from the scene of offencepost-mo tem , collecting the muddamal axe from the scene of offencepost-mortem , colle ting the muddamal axe from the scene of offencepost-mortem , collecting the mu damal axe from the scene of offencepost-mortem , collecting the muddamal axe f om the scene of offencepost-mortem , collecting the muddamal axe from the scen of offencepost-mortem , collecting the muddamal axe from the scene of offence ost-mortem , collecting the muddamal axe from the scene of offencepost-mortem colle

les and sending them for chemical analysis, on the basis of the prima facie case against the appellant, he chargesheeted the appellant.

The learned Additional Sessions Judge, on the basis of the evidence collected against the appellant found the appellant guilty of committing murder of deceased Ganpat and convicted him under section 302 IPC and, as stated above, sentenced him to suffer R.I. for life. Hence the appellant has preferred the present appeal.

Mr.H.M.Chinoy, learned Advocate (appointed as amicus curiae) for the appellant has taken us through the evidence of all the material witnesses. He submitted that no reliance can be placed on the sole testimony of eye-witness Bai Ramila (PW 4). He further submitted that Bai Ramila's evidence does not get any corroboration from the evidence of the other witnesses, particularly regarding the finding of the muddamal axe. Mr. Chinoy finally submitted that considering the fact that there was a delay in filing the complaint by aboutng the fact that there was a delay in filing the complaint by aboutng the fact that there was a delay in filing the fact that there was a delay in filing the complaint by aboutng the fact that there was a delay in filing the complaint by aboutng the fact that there was a delay in filing the complaint by aboutng the fact that there was a delay in filing the complaint by aboutng the fact that there was a delay in filing the complaint by aboutng the fact that there was a delay in filing the complaint by aboutng the fact that there was a delay in filing the complaint by aboutng the fact that there was a delay in filing the complaint by aboutng the fact that there was a delay in filing the complaint by aboutng the fact that there was a delay in filing the complaint by aboutng the fact that there was a delay in filing the complaint by aboutng the fact that there was a delay in filing the complaint by aboutng the fact that there was a delay in filing the complaint by aboutng the fact that there was a delay in filing the complaint by aboutng the fact that there was a delay in filing the complaint by aboutng the fact that there was a delay in filing the complaint by aboutng the fact that there was a delay in filing the complaint by aboutng the fact that there was a delay in filing the complaint by aboutng the fact that there was a delay in filing the complaint by aboutng the fact that there was a delay in filing the complaint by aboutng the fact that there was a delay in filing the complaint by abou

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reliance can be placed on the evidence of the prosecution witnesses.

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In the instant case, the prosecution has mainly relied on the evidence of Bai Ramila (PW 4) the wife of the deceased Ganpat. Regarding the cause of the incident, she stated in her evidence that the appellant is a headstrong and a quarrelsome person. He inflicted a knife blow on one Ramesh Dahya on the last Holi festival and, therefore, the Tadvi community people expelled him from the community. Therefore, her husband had, in fact, specifically told the appellant not to attend the marriage dinner of the daughter of his brother Ambalal and in that connection there was also hot exchange of words between them before about 4 or 5 days. Since the appellant was not invited to attend the marriage function, he was bearing a grudge against the deceased. Regarding the incident, she stated that her husband was lying on the cot outside the house and she was sitting just by his right side when her grand just by his right side when her grand

lamp was lightening in the house.

In the Maholla there was an electric pole with the electric light on. The appellant came with an axe and inflicted a blow on the head of the deceased. She cried for help and therefore the appellant ran away leaving the axe already pierced in the head of the deceased. On hearing the shouts, her son Vikram and his wife Savita came. She thereafter had gone to inform Vithalbhai who came with her at the scene of offence. Nothing is taken out in her cross-examination and she has remained consistent in her version deposed in her examination-in-chief. There is, therefore, no reason for us to discard her testimony. She is the wife of the deceased and her presence at the scene of offence was obvious. She was sitting outside her house just by the side of the cot on which her husband was sleeping and her grand son was answering natural call. The said fact is also found in the Panchnama of the scene of oat

the complainant Vithalbhai (PW 3), except on certain minor points.

Bai Ramila (PW 4) in her evidence has stated that the axe was lying pierced in the head of her husbande while Vithalbhai in his evidence has stated that he saw the axe pierced in the head whereas it is not so stated in the complaint. Vikram (PW 5) in his evidence has stated that the axe was lying below the cot of his father . Now this discrepancy in the versions of these witnesses about the lying of the axe is too trifle a thing which does not affect the oral testimony of the witnesses. As far as the broad facts of the incident are concerned, the evidence of the witnesses corroborates each other. In any case, this is not a circumstance which would totally destroy the prosecution case.

Mr.Chinoy, learned Advocate for the appellant, made a grievance that even though the incident in question happened at about 2.30 a.m., Vithalbhai (PW 3) lodged the complaint with Vavdi Outpost at 8.00 a.m. He submitted thpl int with Vavdi Outpost at 8.00 a.m. He submitted thplaint with Vavdi Outpost t 8.00 a.m. He submitted thplaint with Vavdi Outpost at 8.00 a.m. He submitt d thplaint with Vavdi Outpost at 8.00 a.m. He submitted thplaint with Vavdi O tpost at 8.00 a.m. He submitted thplaint with Vavdi Outpost at 8.00 a.m. He ubmitted thplaint with Vavdi Outpost at 8.00 a.m. He submitted thplaint with avdi Outpost at 8.00 a.m. He submitted thplaint with Vavdi Outpost at 8.00 a. He submitted thplaint with Vavdi Outpost at 8.00 a.m. He submitted thplain with Vavdi Outpost at 8.00 a.m. He submitted thplaint with Vavdi Outpost at .00 a.m. He submitted thplaint with Vavdi Outpost at 8.00 a.m. He submitted hplaint with Vavdi Outpost at 8.00 a.m. He submitted thplaint with Vavdi Outp st at 8.00 a.m. He submitted thplaint with Vavdi Outpost at 8.00 a.m. itted thplaint with Vavdi Outpost at 8.00 a.m. He submitted thplaint with Vav i Outpost at 8.00 n

fter due deliberations with other ten to fifteen persons and, therefore, the story put forward by the prosecution is not believable. We are not impressed by this submission for the simple reason that the incident happened at about 2.30 a.m. and it was but natural that the prosecution witnesses would try to stay with the members of the deceased as

2.30 a.m. being odd hours one would not like to rush to the police station and instead would prefer to wait till the morning. This is particularly with reference to the Adivasi community the prosecution witnesses belong to. Furthermore, Vavdi Outpost is situated at a distance of about 3 kilometers from the scene of offence. These persons had no vehicle. Therefore, the conduct of the complainant in lodging the complaint immediately in the morning is but natural. We are, therefore, of the opinion that there was no delay on the part of the complainant in lodging the complaint. The ft

marriage of the brother's daughter of the deceased was arranged on 6-5-86, many persons might have fathered and, therefore, if the issue was discussed with them and there was talk regarding the incident with those persons, it cannot be called a deliberation on the part of the prosecution witnesses before lodging the complaint. As stated above, the entire case rests on the sole testimony of Bai Ramila and her evidence is truthful, natural and suffers from no infirmity. We are, therefore, of the opinion that the learned Additional Sessions Judge was perfectly justified in placing reliance on her evidence and convicting the appellant.

Since we are in total agreement with the reasoning of the learned Additional Sessions Judge, and as we do not find any merit in this appeal, it fails and is dismissed.

MR.JUSTICE B.C.PATEL